

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALLEN EUGENE HARRIS,)
Petitioner,) Case No. 1:22-cv-269-SPB-RAL
v.)
WARDEN SCI ALBION, *et al.*,)
Respondents.)

MEMORANDUM ORDER

The petition for a writ of habeas corpus in this case was received by the Clerk of Court on September 14, 2022¹ and referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation (“R&R”) in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Civil Rule 72. ECF No. 1, 4. On January 26, 2023, Respondents filed a motion to dismiss the instant petition. ECF No. 8.² Petitioner’s response to the motion was docketed on February 2, 2023. ECF No. 10.

On May 31, 2023, Magistrate Judge Lanzillo issued an R&R recommending that the instant petition be dismissed as untimely and that a certificate of appealability be denied. ECF No. [16]. In addition to finding Petitioner’s claims untimely, Judge Lanzillo concluded that they had also been procedurally defaulted and failed, in any event, to state a cognizable basis for relief.

¹ Although not received until September 14, 2022, the petition bears a signature and postmark date of September 12, 2022. See ECF No. 1 at p. 5 and ECF No. 1-2. Under the prisoner “mailbox rule,” *Houston v. Lack*, 487 U.S. 266 (1988), the petition is deemed filed as of September 12, 2022, when it was placed into the prison’s mailing system.

² The Respondents’ motion was originally filed on January 20, 2023, but the document did not fully upload into the Court’s CM/ECF system. ECF No. 6. Respondents therefore filed an errata on January 26, 2023, which included all five pages of their motion, but no certificate of service or proposed order. ECF No. 8. Respondents refiled their motion, along with the certificate of service and proposed order, on May 2, 2023. ECF No. 15.

Objections to the Report and Recommendation were due to be filed no later than June 20, 2023. To date, no objections have been received.

After *de novo* review of the petition and documents in the case, including the Respondents' motion to dismiss, Petitioner's response thereto, and the Magistrate Judge's Report and Recommendation, the following order is entered:

AND NOW, this 30th day of June, 2023, IT IS ORDERED that the Respondents' motion to dismiss is GRANTED. IT IS FURTHER ORDERED that the within petition for a writ of habeas corpus shall be, and hereby is, DISMISSED as untimely and procedurally defaulted.

IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge Lanzillo, issued on May 31, 2023, ECF No. [16], is adopted as the opinion of this Court.

Because jurists of reason would not find it debatable whether Petitioner failed to file his petition in a timely manner and/or whether his claims herein are procedurally defaulted, IT IS FURTHER ORDERED that no certificate of appealability shall issue.

Finally, in light of the foregoing, IT IS ORDERED that the Petitioner's Motion to Correct Sentence, filed on April 25, 2023, ECF No. [14], is DISMISSED as moot.

As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."



SUSAN PARADISE BAXTER
United States District Judge